

### **REMARKS**

This is intended as a full and complete response to the Office Action dated August 21, 2008, having a shortened statutory period for response set to expire on November 21, 2008. Please reconsider the claims pending in the application for reasons discussed below.

In the specification, paragraph [00144] has been amended to correct minor editorial problems.

Claims 35-86 are pending in the application. Claims 35-41, 43-56, 58-68, 70-71, 73-82, and 84-85 remain pending following entry of this response. Claims 35, 39, 40, 48, 49, 52, 54, 55, 60, 61, 64, 67, 70, 73, 75, 77 and 79 have been amended. Claims 42, 57, 69, 72, 83 and 86 have been cancelled. Applicants submit that the amendments do not introduce new matter.

Further, Applicants are not conceding in this application that those amended (or canceled) claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the claimed subject matter. Applicants respectfully reserve the right to pursue these (pre-amended or canceled claims) and other claims in one or more continuations and/or divisional patent applications.

### **Claim Objections**

Claim 52 is objected to because there are two claims numbered 52.

The second instance of Claim 52 has been amended to be Claim 53. Applicants submit that the claim, as amended, obviates the objection and respectfully requests withdrawal of the objection to this claim.

### **Allowable Subject Matter**

Claims 42-47, 51-52, 57-59, 69, 72, 75, 79, 83 and 86 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Independent claim 40 has been amended to include the allowable subject matter of claim 42 as suggested by Examiner. Accordingly, Applicant submits claim 40 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 49 has been amended to include the allowable subject matter of claim 52 as suggested by Examiner. Accordingly, Applicant submits claim 49 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 55 has been amended to include the allowable subject matter of claim 57 as suggested by Examiner. Accordingly, Applicant submits claim 55 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 67 has been amended to include the allowable subject matter of claim 69 as suggested by Examiner. Accordingly, Applicant submits claim 67 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 70 has been amended to include the allowable subject matter of claim 72 as suggested by Examiner. Accordingly, Applicant submits claim 70 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 73 has been amended to include the allowable subject matter of claim 75 as suggested by Examiner. Accordingly, Applicant submits claim 73 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 77 has been amended to include the allowable subject matter of claim 79 as suggested by Examiner. Accordingly, Applicant submits claim 77 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 81 has been amended to include the allowable subject matter of claim 83 as suggested by Examiner. Accordingly, Applicant submits claim 81 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Independent claim 84 has been amended to include the allowable subject matter of claim 86 as suggested by Examiner. Accordingly, Applicant submits claim 84 and its dependents are allowable and withdrawal of the objection is respectfully requested.

Claim Rejections - 35 U.S.C. § 102

Claims 35-41, 48-50, 53-56, 60-68, 70-71, 73-74, 76-78, 80-82 and 84-85 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Paulraj et al.* (U.S. Patent No. 6,351,499, hereinafter “*Paulraj*”).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In this case, *Paulraj* does not disclose “each and every element as set forth in the claim”.

For example, regarding claim 35, *Paulraj* does not disclose providing a second plurality of data symbol streams as a second plurality of transmit symbol streams in accordance to a non-steered spatial multiplexing mode for transmission from a plurality of antennas to a second user terminal in a second transmission interval. Claims 39, 61, and 64 recite similar claim limitations.

Applicants note that claims 35, 39, 61 and 64 have been amended with a limitation similar to the limitations recited in claim 42, which the Examiner has indicated as allowable subject matter. Applicants submit that claims 35, 39, 61 and 64 and the claims that depend therefrom are also allowable, and withdrawal of the rejection to the claims is respectfully requested.

Regarding claim 48, *Paulraj* does not disclose a receive spatial processor operative to perform receiver spatial processing on a second plurality of received symbol streams in accordance with a second spatial multiplexing mode to obtain a second plurality of recovered data symbol streams, wherein the second spatial multiplexing mode is a non-steered spatial multiplexing mode;

Applicants note that claim 48 has been amended with a limitation similar to the limitations recited in claim 42, which the Examiner has indicated as allowable subject matter. Applicants submit that claim 48 is allowable, and withdrawal of the rejection to the claim is respectfully requested.

Regarding claim 54, *Paulraj* does not disclose a controller operative to receive information indicating a spatial multiplexing mode and a plurality of rates to use for data transmission, wherein the spatial multiplexing mode is selected from among a plurality of spatial multiplexing modes supported by the system, wherein at least one of the spatial multiplexing modes is a non-steered spatial multiplexing mode, and wherein each of the plurality of rates is selected from among a set of rates supported by the system. Claim 60 recites similar claim limitations.

Applicants note claims 54 and 60 have been amended with a limitation similar to the limitations recited in claim 42, which the Examiner has indicated as allowable subject matter. Applicants submit that claims 54 and 60 are allowable, and withdrawal of the rejection to the claims is respectfully requested.

Regarding claims 40, 49, 55, 67, 70, 73, 77, 81, and 84, as stated above, these claims have been amended to recite allowable subject matter indicated by the Examiner. Therefore, the rejection to these claims is believed to be moot in view of the amendments.

### **CONCLUSION**

Therefore, for at least the reasons presented above with respect to all of the pending claims subsequent to entry of this response, Applicants assert that all claims are patentably distinct from all of the art of record. All objections and rejections having been addressed, it is respectfully submitted that this application is in condition for allowance and a Notice to that effect is earnestly solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

**Charge Statement:** For this application, the Commissioner is hereby authorized to charge any required fees or credit any overpayment to Deposit Account 17-0026.

Respectfully submitted,  
QUALCOMM Incorporated  
Customer Number: **23696**

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By: /Ross L. Franks/  
Ross L. Franks, Reg. No. 47,233  
Tel. No.: (858) 845-1946

QUALCOMM Incorporated  
Attn: Patent Department  
5775 Morehouse Drive  
San Diego, CA 92121-1714  
Telephone: (858) 658-5787  
Facsimile: (858) 658-2502